



## **Testimony of**

**Gary Jay Kushner**

**Counsel to Grocery Manufacturers of America, Inc.**

**House Committee on Agriculture  
Subcommittee on Livestock & Horticulture**

**Public Hearing to Review the Mandatory  
Country of Origin Labeling Law**

**October 1, 2003**

## **Subcommittee on Livestock & Horticulture**

Grocery Manufacturers of America

Country-of-Origin Labeling Testimony, October 1, 2003

Good afternoon. My name is Gary Jay Kushner. On behalf of the member companies of the Grocery Manufacturers of America, Inc. (GMA), I appreciate this opportunity to testify before the Subcommittee on Livestock & Horticulture regarding the mandatory country of origin labeling law enacted as part of the Farm Security and Rural Investment Act of 2002 (the Farm Bill).

GMA is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than \$500 billion, GMA members employ more than 2.5 million workers in all 50 states. The organization applies legal, scientific and political expertise from its member companies to vital food, nutrition and public policy issues affecting the industry. Led by a board of 42 Chief Executive Officers, GMA speaks for food and consumer product manufacturers and sales agencies at the state, federal and international levels on legislative and regulatory issues. The association also leads efforts to increase productivity, efficiency and growth in the food, beverage and consumer products industry.

The American Frozen Food Institute (AFFI) also endorses the testimony I am giving here today. AFFI's more than 500 member companies are responsible for approximately 90 percent of the frozen food processed annually in the United States, valued at more than \$60 billion. AFFI members are located throughout the country and are engaged in the manufacture, processing, transportation, distribution, and sales of products nationally and internationally.

### GMA Opposes Mandatory Country of Origin Labeling

GMA has consistently opposed additional country of origin labeling requirements, like those enacted as part of the 2002 Farm Bill. Additional mandatory country of origin labeling requirements do nothing to enhance the safety of the domestic food supply or the health of American consumers. Yet they involve increased costs for producers, manufacturers, retailers, and consumers, and undermine efforts to expand international markets for U.S. products. GMA maintains that position today and urges the Subcommittee to support modification of the country of origin labeling provisions in the Farm Bill to provide for a voluntary, USDA-administered country of origin program that is market oriented and consumer friendly.

A voluntary system would enhance consumer choice but avoid the tremendous costs and uncertainties that mandatory country of origin labeling will bring. The very serious concerns GMA has expressed with respect to USDA's apparent plans for implementing mandatory country of origin labeling, as reflected in the Department's October 2002 voluntary guidelines, only underscore the need to move to a voluntary system.

### GMA Has Urged USDA to Bring its Guidelines into Compliance with the Law

## **Subcommittee on Livestock & Horticulture**

Grocery Manufacturers of America

Country-of-Origin Labeling Testimony, October 1, 2003

Together with AFFI, the National Food Processors Association, and the National Fisheries Institute, GMA submitted comments to USDA on the Department's "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts". In those comments, GMA recommended several changes to the guidelines that USDA should adopt prior to promulgating binding regulations in order to comply with the law and historical regulatory precedent.

Most of the changes GMA recommended focused on USDA's interpretation of the exemption in the law for processed food items. Congress wisely included this exemption from the definition of "covered commodity," in recognition of the complexities already involved in labeling processed foods.

Rather than interpreting the processed foods exemption in a manner consistent with its common sense, plain meaning, USDA insists on an extremely narrow interpretation. Specifically, USDA interprets the exemption to apply only where (1) the processed food item is a combination of ingredients that result in a product with a different identity from the covered commodity (e.g., raw salmon in sushi or peanuts in a candy bar); or (2) the covered commodity has undergone a "material change" so that its character is substantially different from that of the covered commodity."<sup>1</sup>

### USDA's Interpretation of "Processed Foods" is Inconsistent with Precedent

USDA's interpretation of the exemption is so narrow that it directly contradicts definitions of "processing" and "processed foods" used throughout federal laws and regulations applied to foods. It also contravenes the stated intent of the sponsors of the country of origin labeling legislative provisions.

The Federal Food, Drug, and Cosmetic Act, which governs the production, processing, and labeling of virtually all foods other than meat and poultry, defines "processed food" as "any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, and milling." 21 U.S.C. § 321(gg). USDA has consistently used similar language in defining "processing" and "processed food" in connection with the many food related programs it administers. For example,

---

<sup>1</sup> This interpretation produces numerous absurd results. For example, peanuts that have been shelled, mixed with salt, and placed in closed retail packages are not considered processed food items. Likewise, frozen peas or a mixture of frozen peas and carrots are not processed food items, but canned peas or a mixture of canned peas and carrots are.

## **Subcommittee on Livestock & Horticulture**

Grocery Manufacturers of America

Country-of-Origin Labeling Testimony, October 1, 2003

USDA regulations governing its voluntary fruit and vegetable grading programs define “processed product” to mean:

any fruit, vegetable, or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

7 C.F.R. § 52.2.

### USDA’s Interpretation is Inconsistent with Legislative Intent

There is no legislative history to support USDA’s extremely narrow interpretation of the processed food item exclusion. Indeed, statements by the law’s chief sponsors reveal that the Farm Bill provisions were intended only to extend country of origin labeling to those commodities not currently required to bear such labeling under the tariff laws, as interpreted and applied by U.S. Customs. As Representative Bono remarked, “virtually everything bears its place of origin except for produce. I believe that consumers want this to change.”<sup>2</sup>

USDA’s interpretation of the processed food item exemption results in a mandatory labeling program that goes well beyond those boundaries. Frozen produce and shelled, roasted, and packaged peanuts – two items already subject to country of origin marking under the tariff laws -- must comply with a second and potentially incompatible labeling requirement administered by USDA.

### USDA’s Interpretation will Harm Domestic Producers

By subjecting these and other processed foods to this extra mandatory country of origin labeling scheme, USDA will only exacerbate the costs of an already very expensive measure for the entire food industry, from farm to table. GMA fully expects domestic producers, as well as processors and retailers, to suffer as a result of mandatory country of origin labeling. In the frozen produce industry, processors will have every motivation to limit suppliers to simplify compliance with the program’s record keeping and audit requirements. Relationships with some domestic suppliers will no doubt be discontinued.

Moreover, many processors of mixed frozen produce (e.g., vegetable stir fry, fruit salad) likely will move to eliminate domestic sources entirely because, ironically, as interpreted by USDA, mandatory country of origin labeling actually favors foreign

---

<sup>2</sup> Congressional Record at H6353 (October 4, 2001).

## **Subcommittee on Livestock & Horticulture**

Grocery Manufacturers of America

Country-of-Origin Labeling Testimony, October 1, 2003

producers. Under USDA's guidelines, mixed frozen produce produced entirely outside the U.S. from foreign origin produce need only bear the country of origin as determined by the tariff laws. Mixed frozen produce that contains at least some produce grown in the U.S., however, must bear labeling that provides origin information for each raw material and does so in descending order of predominance by weight.

### Compliance with Additional USDA Country of Origin Labeling Requirements Will be Costly and Burdensome

Even for those producers who retain their full customer base, costs will rise. Country of origin labeling compliance will necessitate expenditures on additional labor, modified product segregation systems, record keeping, and audits. Again, GMA urges the Subcommittee to act to prevent these surely unintended but enormously costly consequences.

### If Congress Does Not Act to Revoke USDA's Country of Origin Labeling Mandate, the Scheme Must be Substantially Modified

The legal and statutory basis for GMA's consistent opposition to mandatory country of origin labeling administered by USDA as reflected in the Department's guidelines is stated in great detail in our comments to USDA. In short, GMA continues to believe that additional country of origin labeling is unnecessary and imprudent. If Congress does not act to revoke USDA's mandate, however, the scheme developed by the Department must be substantially modified before final regulations are adopted. A brief synopsis of GMA's recommendations follows.

- **Final regulations should not apply to any peanut products other than in-shell peanuts sold in bulk at retail:** Shelled, roasted and salted peanuts are clearly "processed" and should be exempt under the processed food item exemption. Moreover, these peanuts are already required to bear country of origin information under the tariff laws; subjecting them to mandatory country of origin labeling would be duplicative, costly, and unnecessary.
- **Mixed processed food products (e.g., mixed frozen fruits and vegetables) should be clearly excluded from the final regulations:** Mixed processed products, by definition, fall within the plain language of the processed food item exemption. USDA, in addressing mixed processed food products in its voluntary guidelines, adopted an impermissibly narrow interpretation of this exclusion.

## **Subcommittee on Livestock & Horticulture**

Grocery Manufacturers of America

Country-of-Origin Labeling Testimony, October 1, 2003

- **Frozen produce and frozen seafood should be excluded from the final regulations.** Frozen produce and frozen seafood, already subject to country of origin labeling under the tariff laws, fall within the plain meaning of the exclusion for an ingredient in a processed food item and should be excluded from the final regulations.
- **The requirement in USDA's guidelines to display the country where processing occurred should be deleted.** Under USDA's guidelines, additional label information, beyond country of origin, must be provided in certain cases. This requirement goes beyond the statute and exceeds USDA's authority.
- **USDA should not require multiple countries of origin to be listed in order of predominance by weight.** Under USDA's guidelines, "commingled fungible goods" must be listed in the order of their predominance by weight, even though no such requirement appears in the 2002 Farm Bill. If incorporated in the final regulations, this provision would necessitate frequent and costly labeling changes, and add substantially to the compliance burden for the U.S. food industry.

### Summary

GMA has consistently opposed country of origin labeling as mandated by the Farm Bill. At the very least, the concerns that we have raised in comments with USDA and in our testimony today illustrate the need for aggressive oversight of USDA's implementation of the 2002 Farm Bill country of origin labeling requirements.

GMA continues to believe, however, that this Subcommittee would best serve the interests of American producers, processors, retailers, and consumers by abandoning the requirements enacted in the 2002 Farm Bill and adopting a voluntary program. A voluntary approach to country of origin labeling would eliminate the numerous unintended consequences of the current law, yet create a market-oriented system that provides origin information to interested consumers.

GMA looks forward to working with the Subcommittee as it reviews the implementation of country of origin labeling and considers statutory changes. Thank you for this opportunity to testify and for your consideration.